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# ENVIRONMENTAL ASSESSMENT BOARD

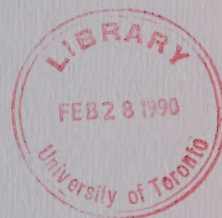
VOLUME: 183

DATE: Wednesday, February 14, 1990

BEFORE:

A. KOVEN, Chairman

E. MARTEL, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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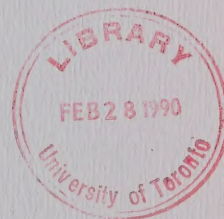
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the  
Honourable Jim Bradley, Minister of the  
Environment, requiring the Environmental  
Assessment Board to hold a hearing with  
respect to a Class Environmental  
Assessment (No. NR-AA-30) of an  
undertaking by the Ministry of Natural  
Resources for the activity of timber  
management on Crown Lands in Ontario.

-----  
Hearing held at the Offices of the  
Environmental Assessment Board,  
2300 Yonge Street, Suite 1201, Toronto,  
Ontario, on Wednesday, February 14th,  
1990, commencing at 10:00 a.m.

-----  
VOLUME 183

BEFORE:

MRS. ANNE KOVEN  
MR. ELIE MARTEL

Chairman  
Member



A P P E A R A N C E S


MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH )	MINISTRY OF NATURAL
MS. K. MURPHY )	RESOURCES
MS. Y. HERSCHER )	
MR. B. CAMPBELL )	
MS. J. SEABORN )	MINISTRY OF ENVIRONMENT
MS. B. HARVIE )	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRIES
MR. R. COSMAN )	ASSOCIATION and ONTARIO
MS. E. CRONK )	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY )	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT BOARD
MR. E. HANNA )	ONTARIO FEDERATION OF
DR. T. QUINNEY )	ANGLERS & HUNTERS
MR. D. HUNTER )	NISHNAWBE-ASKI NATION
MS. N. KLEER )	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK )	FORESTS FOR TOMORROW
MR. R. LINDGREN )	
MR. P. SANFORD )	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD )	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES )	ASSOCIATION
MR. R. EDWARDS )	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION





APPEARANCES: (Cont'd)

MR. L. GREENSPOON)	NORTHWATCH
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MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK )	MUNICIPAL COMMITTEE
MR. D. SCOTT )	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS
	OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH )	
MR. J. EBBS	ONTARIO PROFESSIONAL
	FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM
	ASSOCIATION OF ONTARIO
MR. D. COLBORNE )	GRAND COUNCIL TREATY #3
MS. S.V. BAIR-MUIRHEAD )	
MR. R. REILLY	ONTARIO METIS &
	ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF
	FORESTRY (CENTRAL
	ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN
	DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY
	ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON
	WATCHDOG SOCIETY



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APPEARANCES: (Cont'd)

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MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION





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I N D E X   O F   E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1045	Letter dated February 9, 1990 from Grace Patterson, Chairman of the Environmental Assessment Board re: continuation of Timber Management Hearing.	32213





1 ---Upon commencing at 10:00 a.m.

2 MADAM CHAIR: Good morning, ladies and  
3 gentlemen. Please be seated.

4 Before we hear from the parties today on  
5 the matter of the continuation of the hearing, I have a  
6 few things that I would like to say.

7 The first is that on Monday I overlooked  
8 putting on the record a letter from Grace Patterson,  
9 Chairman of the Environmental Assessment Board, dated  
10 February the 9th, 1990, authorizing the Panel to  
11 continue.

12 I suppose we should make that letter an  
13 exhibit, and the exhibit number would be 1045.

14 ---EXHIBIT NO. 1045: Letter dated February 9, 1990  
15 from Grace Patterson, Chairman of  
16 the Environmental Assessment  
Board re: continuation of Timber  
Management Hearing.

17 MADAM CHAIR: We have carefully reviewed  
18 the sections in the Environmental Assessment Act, the  
19 Statutory Powers Procedure Act, our own Rules of  
20 Practice and Procedure, as well as the wording in the  
21 Consolidated Hearings Act, even though it does not  
22 apply to the timber management hearing, in order to  
23 prepare ourselves to listen to what the parties have to  
24 say about the legal jurisdiction for continuing the  
25 timber management hearing in light of the resignation

1 of one of the three members. And we will start that  
2 discussion in just a moment.

3 Another matter that we intend to discuss  
4 today is retaining of legal counsel by the Board, and  
5 we would remind the parties of the Board's experience  
6 with legal counsel in the past, and that was to assist  
7 in the examination of Dean Baskerville who was called  
8 as the Board's witness. At that time we listened to  
9 the parties' concerns about the Board's relationship  
10 with counsel and, in that situation, the communication  
11 between the Board and its counsel at the hearing was an  
12 open forum and on the record.

13 Under the present circumstances we are  
14 all the more sensitive to the need to maintain an  
15 arm's-length relationship with legal counsel whose sole  
16 purpose would be to provide the Board with legal advice  
17 when requested to do so.

18 Our position with respect to retaining  
19 legal counsel is perfectly clear. Decisions will be  
20 made only by members of this Board and the writing of  
21 the decision will be made by this Board. All  
22 decisions, including legal decisions, will be made by  
23 the Board.

24 So I think we are ready to begin and hear  
25 your comments.

1                   What order will we go in? Mr. Cassidy,  
2           first.

3                   MR. CASSIDY: Thank you, Madam Chair.  
4           And thank you for your comments this morning, that will  
5           shorten some of mine.

6                   Madam Chair, we have been working very  
7           hard to review with our clients, the Ontario Forest  
8           Industries Association and the Ontario Lumber  
9           Manufacturers' Association on the outstanding issues  
10          that my colleague Mr. Cosman raised with both of you on  
11          Monday, and I am pleased to be able to report as  
12          follows, and will do so with 10 points.

13                  First, after having reviewed and  
14          considered carefully the language of the Environmental  
15          Assessment Act and the relevant jurisprudence, we are  
16          satisfied that the two remaining members of this Board  
17          can legally proceed to complete this hearing.

18                  Second, we wish to emphasize that at no  
19          time by our request for an adjournment in order to  
20          consider these issues did we have any doubt in the  
21          ability or integrity of the two members before whom we  
22          stand today. As Mr. Cosman said, I believe on Monday,  
23          we have respect for these members and for their  
24          willingness to continue with this hearing.

25                  Nevertheless, it was incumbent upon us as



1 counsel for a party which has invested a great deal of  
2 time and money in this process to ensure that no one at  
3 a later point or date could launch a challenge that  
4 would render a decision of the panel, as it is now  
5 constituted, invalid. The Board knows that we have  
6 always proceeded fairly and with integrity before it  
7 and we intend to and shall continue in that vein.

8 Third, our clients have asked us to put  
9 before you their very real concern about the length and  
10 the cost of these proceedings. The private sector  
11 clients for whom we act, Madam Chair, are not being  
12 subsidized for this hearing and in a difficult market  
13 they are expending funds which otherwise could be spent  
14 on production and other undertakings for their  
15 companies.

16 Fourthly, we know that the Board is  
17 greatly interested in expediting this hearing and we  
18 add our invoice to that, and we indicate that the  
19 matter of escalating costs is one that our clients are  
20 greatly concerned about, to the point where their  
21 ability to participate fully in these hearings is in  
22 jeopardy.

23 Now, with my fifth point, Madam Chair, I  
24 propose to raise two matters of procedure which will  
25 have a bearing on the balance of the hearing and the

1 timeliness of its completion, and you have already  
2 referred to one of them this morning. So I will  
3 commence with the next point which, for the sake of the  
4 transcript, can be point No. 6 in my statement.

5 First, there is a matter of legal counsel  
6 for the Board. As you indicated on Monday and as you  
7 indicated today the Board has recognized its need to  
8 have legal counsel available to it for the balance of  
9 this hearing. Although more than capable of dealing  
10 with the substantive issues before it, this panel will  
11 have to make decisions on evidentiary, procedural,  
12 jurisdictional and other legal issues throughout the  
13 course of this hearing. Subsection 14 of Section 18 of  
14 the Environmental Assessment Act provides that no  
15 member of the Board shall participate in a decision of  
16 the Board pursuant to a hearing unless he was present  
17 throughout the hearing and heard the evidence and  
18 argument of the parties. Accordingly, it would be  
19 entirely improper for advice to be given to these panel  
20 members by another member of the Environmental  
21 Assessment Board.

22 It is, however, quite proper and  
23 necessary in our view for this panel to obtain the  
24 assistance of independent legal counsel and, in fact,  
25 as I believe you know, the Board Rules clearly allow

1       for that under Rule 49.

2                       However, the fact remains that the Act  
3       makes it clear, the Environmental Assessment Act, that  
4       no member of the Board, other than members of the Board  
5       hearing this matter, may participate in a decision  
6       relating to the hearing, and this includes not only the  
7       ultimate decision that this panel has to make but any  
8       decision that the Board has to make in the context of  
9       the hearing.

10                      For that reason we urge and applaud the  
11       Board's efforts to find and retain independent legal  
12       counsel to advise it; in that advice from other Board  
13       members; including the Chairman of the Environmental  
14       Assessment Board, would be unlawful. A Board member  
15       who is not a member of the panel cannot take off his or  
16       her hat and say: I am now the lawyer for this panel.

17                      My seventh point. I believe all counsel  
18       here and the Board recognize the need for independent  
19       legal assistance to be available to the Board and, in  
20       that regard, we would like to say that it will be a  
21       great inconvenience to the Board and result in real  
22       potential for delay of this hearing if full-time  
23       counsel is not appointed.

24                      As you know, Madam Chair, legal issues  
25       arise in the course of the evidence. It is often



1 necessary and in our view it's absolutely necessary to  
2 understand the evidence to make a ruling on the  
3 admissibility of a particular document when a legal  
4 doctrine such as privilege, for example, is asserted.

5 Similarly issues of administrative law,  
6 issues relating to the legal interpretation of sections  
7 of the Environmental Assessment Act, of other Acts or a  
8 myriad of regulations and such other legal issues have  
9 arisen on a number of occasions, as you by no doubt are  
10 aware, over the last 20 months.

11 MADAM CHAIR: Yes, we have been here, Mr.  
12 Cassidy.

13 MR. CASSIDY: As have I, Madam Chair. We  
14 are awaiting the ruling of the Board with respect to a  
15 motion brought by the Anglers & Hunters and the Board's  
16 legal right to amend the purpose of the undertaking,  
17 and I use all of these as examples, in that when a  
18 matter comes up and the Board decides that legal  
19 counsel is necessary for it, it will cause great  
20 inconvenience, loss of time and additional cost if  
21 parties must wait while you, Madam Chair, try to reach  
22 your legal counsel by telephone and, when you reach him  
23 or her, it will be necessary to have the context of the  
24 evidence and submissions of the other parties for that  
25 legal counsel to be able to respond effectively and

1 provide you with necessary legal advice.

2 We frankly cannot see how this can be  
3 done on a part-time basis without serious problems.  
4 And any advice, as I think you have indicated this  
5 morning, rendered by independent legal counsel to the  
6 Board must be rendered in open hearing to permit other  
7 counsel to comment, and it would be difficult for you  
8 to get advice over the telephone and come back and  
9 achieve that purpose.

10 My eighth point. Having said all this,  
11 we undertake to you that we will exercise our position  
12 responsibly as legal counsel to ensure that no  
13 unnecessary legal wrangles take place before the Board  
14 and in that we hope sincerely that we have the  
15 cooperation of other counsel.

16 Now, my ninth point is in fact the second  
17 procedural matter I indicated, Madam Chair, and that  
18 relates to the completion of this case and has arisen  
19 in the course of our thoughts on how the case is to  
20 continue, and apart from what one may call the glitch  
21 caused by the resignation of the former Chairman, I  
22 believe that you know that we have always acted  
23 expeditiously and in compliance with the directions of  
24 this Board as to the timing of the different matters  
25 that must be completed in the course of the hearing.

1 We again give you our undertaking that we will continue  
2 to so meet our obligations in this regard to ensure a  
3 timely completion of this hearing. I, therefore,  
4 propose to have my tenth point address you on the  
5 timing of our case and what happens after our case.

6 As I advised Ms. Devaul yesterday, we  
7 will work very hard to meet a deadline of completing  
8 our evidence before the summer break of this panel.  
9 Having been here for 20 months, you can appreciate that  
10 cross-examinations are not in our control or the  
11 control of any party calling evidence, but that is our  
12 goal. On that basis, this panel will be hearing, it  
13 appears, the Forests for Tomorrow case after the summer  
14 break and if Ms. Swenarchuk's estimate of four months  
15 is correct, her case may be completed by the end of the  
16 year.

17 In order for that to take place, Madam  
18 Chair, we are today asking the Board for the same kind  
19 of direction by way of amendment to it's procedural  
20 order that was imposed on our client associations.  
21 This Board's order dated September 16th, 1988 provided  
22 that Forests for Tomorrow will deliver its witness  
23 statements to the Board and the parties receiving  
24 full-time correspondence prior to the completion of the  
25 evidence of those parties in support of MNR's case, on



1 a date to be fixed by the Board I believe is the  
2 wording, and that is what I wish to speak to you about.

3 We were required to deliver the first of  
4 our witness statements 60 days before the completion of  
5 the MNR's case and we thereafter delivered the balance  
6 of our statements on a regular basis up until the end  
7 of the Ministry's case and before our case actually  
8 commenced before you here in Toronto. We would request  
9 a similar procedural order from this Board to govern  
10 the delivery of Forest for Tomorrow's witness  
11 statements and there are reasons both of fairness and  
12 for time for so doing.

13 Firstly, if all of the statements are  
14 delivered on the last day of our case just before the  
15 summer break we are in no position to prepare  
16 interrogatories and cross-examine upon Forests for  
17 Tomorrow's evidence when it starts unless both counsel,  
18 expert witnesses and clients of a number of parties  
19 give up their summer vacation. By requiring the  
20 delivery of Forests for Tomorrow witness statements on  
21 a staged basis commencing 60 days before July 1st,  
22 1990, it will hopefully ensure that we will not have to  
23 request time to consider those statements to prepare to  
24 meet the case of that party.

25 As you know, Madam Chair, under the rules

1 of natural justice that govern hearings an adjournment  
2 may be necessary and appropriate to enable a party to  
3 meet the case against it. We do not want to have to  
4 request an adjournment of that type and, accordingly,  
5 at this time we are requesting the same procedures that  
6 governed the delivery of the witness statements of our  
7 clients, the forest industries associations, that that  
8 same procedure should govern the delivery of the  
9 evidence of clients represented by Ms. Swenarchuk.

10 To conclude, Madam Chair, I sincerely  
11 state that we look forward to working with you and Mr.  
12 Martel and we look forward to presenting the balance of  
13 this case in an effective, efficient, fair and full  
14 way. We will do our best to assist you and exercise  
15 the proper role that counsel has in assisting a  
16 tribunal or a court.

17 Thank you.

18 MADAM CHAIR: Mr. Cassidy, a  
19 clarification. You are asking for a ruling that  
20 Forests for Tomorrow be required to begin presenting of  
21 its witness statements on May 1st and that they be  
22 completely delivered by the summer adjournment, July  
23 1st?

24 MR. CASSIDY: Yes, that's correct, Madam  
25 Chair.

1                   MADAM CHAIR: Thank you very much, Mr.  
2 Cassidy.

3                   Ms. Swenarchuk?

4                   MS. SWENARCHUK: Madam Chair, we have no  
5 submissions on the subject of the continuation of the  
6 hearing. We are content that the hearing continue with  
7 the Board as constituted.

8                   With regard to Mr. Cassidy's request on  
9 timing of witness statements, I think it's quite  
10 unfortunate that he chose not to discuss this with us  
11 in advance of the statement. We weren't aware that  
12 this request was coming this morning.

13                   Certainly we have turned our minds to the  
14 question of the timing of our case and appropriate  
15 times for witness statement delivery.

16                   Several issues have not been dealt with I  
17 think in Mr. Cassidy's submissions. First of all,  
18 there are potentially other parties in support of the  
19 proponent who may have submissions or cases to present  
20 before Forests for Tomorrow commences. That is one  
21 issue which I think needs to be investigated and  
22 determined before dates for presentation of our case  
23 can be set.

24                   Secondly, of course, for an issue of this  
25 importance I would hope that you would grant us the

1 same degree of discussion that occurred with regard to  
2 the original procedural order; and, that is, that we  
3 would like the time to look at our entire situation and  
4 come back to you with a proposal for appropriate dates  
5 for the commencement and then the completion of witness  
6 statement delivery and that would include, I think,  
7 looking at the period of time over which other parties  
8 have delivered their witness statements.

9 Certainly it is our wish to in every way  
10 possible expedite procedures so that the case is dealt  
11 with as quickly and as efficiently as possible and that  
12 would be our aim, but certainly we need some time to  
13 consider all the issues that will go into our being  
14 able to present you with a realistic and I think a fair  
15 timetable for delivery of our witness statements, and  
16 we would be prepared to do that perhaps on the next day  
17 that the Board convenes in March. And I would be  
18 requesting your cooperation on that issue.

19 MR. FREIDIN: I'm sorry, Madam Chair.  
20 Was the date that was stated by Ms. Swenarchuk when we  
21 reconvene in March, or the end of March? I didn't hear  
22 you.

23 MS. SWENARCHUK: When we convene.

24 MR. FREIDIN: Thank you.

25 MADAM CHAIR: That is March the 5th.



1 MS. SWENARCHUK: I believe so, yes.

2 MADAM CHAIR: Any other comments. Ms.

3 Swenarchuk?

4 MS. SWENARCHUK: No.

5 MADAM CHAIR: Thank you.

6 MR. FREIDIN: Madam Chair, my comments  
7 will be very brief.

8 The Ministry of Natural Resources  
9 supports or takes the same position as the OFIA/OLMA;  
10 and, that is, that the Board has the legal jurisdiction  
11 to continue in the circumstances and we understand that  
12 an Order-in-Council has in fact been issued appointing  
13 Grace Patterson as Chairman of the Board and you,  
14 therefore, filed the document, or the authorization in  
15 writing under Section 13(18).

16 In terms of Mr. Cassidy's submission  
17 about legal counsel, I obviously will have to leave to  
18 the Board the final determination as to whether you  
19 will have full-time legal counsel or not. I can,  
20 however, echo the concern raised by Mr. Cassidy as to  
21 the difficulty legal counsel sometimes has in dealing  
22 with issues and providing advice in the absence of an  
23 understanding of the context in which the situation  
24 arose.

25 And I don't believe I have any other

1       submissions.

2                   MADAM CHAIR: Thank you, Mr. Freidin.

3                   Mr. Colborne?

4                   MR. COLBORNE: Very briefly. I will  
5       speak from here.

6                   It never entered by mind that there was  
7       any real legal question as to whether this panel could  
8       continue, and I am a little surprised that there has  
9       been some suggestion that it was a legal issue. I  
10      didn't even examine the law. I am glad to hear that  
11      some of the other counsel did. I can't say that I am  
12      the least bit surprised about what their conclusion  
13      was.

14                  Secondly, as to the hiring of legal  
15      counsel, it seems to me that it is entirely up to the  
16      Board, and my only question is whether Mr. Cassidy was  
17      suggesting that the advice given by legal counsel who  
18      you may or may not retain and who may or may not be  
19      full time must be on the record as it were?

20                  I wasn't sure what words he used, but I  
21      gained the impression that he was suggesting that it  
22      must be, and perhaps that could be clarified.

23                  Those are my only comments.

24                  MADAM CHAIR: Thank you, Mr. Colborne.

25                  Mr. Cassidy?

1                   MR. CASSIDY: That was my intention, to  
2     the state to the Board that the advice that the Board  
3     gets from its counsel should be on the record so that  
4     the other counsel appearing before the Board have the  
5     opportunity to comment on that advice.

6                   MADAM CHAIR: Well, these are the  
7     practical problems we will have to work out. Obviously  
8     we are cognizant of the concerns about all of this and  
9     we will certainly look at ways of putting somehow our  
10    discussions on the record.

11                  Whether every communication we have with  
12    our counsel is put in open forum or on the record, I  
13    don't know, that doesn't sound very practical to me,  
14    but in terms of that advice coming out under scrutiny  
15    and knowing what advice we were given, I think we will  
16    be looking at that very closely to see how that could  
17    be recorded.

18                  MS. SWENARCHUK: Madam Chair, that was  
19    one point, if you will permit me, that I did wish to  
20    address, and I do not agree with Mr. Cassidy that the  
21    Board is or should be required in any way to tender  
22    publicly its legal advice.

23                  It's our position that the Board is  
24    required of course to operate within the law and that  
25    the decisions that the Board makes on any particular

1 legal issue that is raised becomes of course a matter  
2 of public record and counsel and the parties are in a  
3 position, if they so choose, to question the legality  
4 of those decisions in the normal way, but that Board  
5 members are entitled to receive advice and reach  
6 conclusions on legal issues, as other issues - as the  
7 Board was when one of its members was a lawyer - and  
8 that the precise advice that counsel members receive is  
9 not a matter that need be part of the public record at  
10 all.

11 MR. MARTEL: Would that be similar, Ms.  
12 Swenarchuk, to in your opinion counsel and client  
13 privilege then? In a sense, the discussion and the  
14 advice -- the ultimate decision of course is on the  
15 record, but the discussion between and counsel and  
16 their client, as in all, between and their counsel --

17 MS. SWENARCHUK: Yes, I would consider  
18 that it would be a normal solicitor/client  
19 relationship, that the decision that you make then is  
20 the decision which everyone can agree with or disagree  
21 with and, as I say, take to a higher level should, in  
22 the opinion of a party, there be a legal problem with  
23 the decision, but it's not my view that your  
24 deliberations with your counsel should be a matter of  
25 public record.



1                   MADAM CHAIR: Well, certainly the Board  
2 has the authority to retain legal counsel and use legal  
3 counsel as it sees fit and the parties are obviously in  
4 the position of trusting the Board to conduct itself  
5 properly.

6                   MS. SWENARCHUK: Within the law.

7                   MADAM CHAIR: Within the law.

8                   MR. CASSIDY: I think you have heard my  
9 position, Madam Chairman, in that respect. I do echo,  
10 as I recall what happened with Mr. Turkstra, and that  
11 was that there was an intention that the discussions  
12 between the Board and Mr. Turkstra be in open forum or  
13 there be some sort of report as to the nature of the  
14 advice given to him. And it is my client's position  
15 and it remains my client's position that the parties  
16 must know the advice that independent legal counsel is  
17 giving to the Board so they have an opportunity to  
18 comment on that to the Board.

19                   And with that understanding, I  
20 respectfully disagree with both Mr. Colborne and Ms.  
21 Swenarchuk, and that there is a difference between the  
22 solicitor/client concept and the matter of an  
23 independent tribunal making the decision based on  
24 having heard advice that it has from counsel, and I  
25 submit that the parties here must have the opportunity

1 to comment on that advice that it receives from  
2 counsel.

3 MR. FREIDIN: Madam Chair, if I might  
4 just add. Again, this is obviously a matter that the  
5 Board will take legal advice on, sort of a funny  
6 situation, but I echo the comments made by Mr. Cassidy.

7 Legal counsel, whoever that counsel is,  
8 is going to have to walk a very fine line as to a  
9 decision as to what gets brought before the Board. The  
10 Board will have to draw fine lines as to what gets  
11 brought before the Board because it receives legal  
12 advice and what is not.

13 And I just recall, I one time was counsel  
14 for the Environmental Hearing Board which is the  
15 predecessor of this Board and I had to walk that fine  
16 line on many occasions.

17 I think and I would suggest that counsel  
18 that acts for the Board consider whether the  
19 distinction to be made between giving advice on a legal  
20 issue which has arisen such as this lawyer's  
21 interpretation, I like that or I don't like that, that  
22 is in my view the kind of legal advice which should be  
23 put on the record in open court. Providing general  
24 guidance in terms of principles of relevancy and very  
25 general sorts of matters like that are matters that

1 perhaps need not be put on the record.

2 There are no firm guidelines that I am  
3 aware of that say exactly where the line is drawn as to  
4 what you bring before a tribunal in open court, but  
5 there certainly are certain kinds of advice of the type  
6 that I have suggested which, in my respectful  
7 submission, must be brought before the parties and be  
8 divulged in open court so that counsel can in fact  
9 respond to that kind of advice.

10 MADAM CHAIR: Mr. Campbell?

11 MR. CAMPBELL: Thank you, Madam Chair.

12 I want to state clearly for the record  
13 that the Minister of the Environment supports the  
14 conclusion that this panel has the jurisdiction to  
15 continue with this hearing, to complete it and to  
16 render a decision on this matter.

17 In terms of the timing matters that Mr.  
18 Cassidy raised, I think there is one element that he  
19 overlooked and that was the fact that there is a  
20 commitment to conduct a series of satellite hearings  
21 and on the schedule, as he proposes it, it would appear  
22 that those would likely fall into the mid-winter  
23 months. As a practical matter, the Board may wish to  
24 schedule those following the Industry case or following  
25 the completion of the case of those parties in support

1 for simple, practical, logistic reasons and that may  
2 affect the timing that Mr. Cassidy raised.

3 This matter having been raised for the  
4 first time today and without notice to Ms. Swenarchuk,  
5 I support her request that she be permitted to deal  
6 with this at the next hearing day in March and come  
7 back with some proposal. And I think it would be  
8 helpful, through the coordination provided by Ms.  
9 Devaul, if some indication could be given to the  
10 parties as to the timing for what I'll call the  
11 satellite hearings or the local hearings, so that Ms.  
12 Swenarchuk could take that into account in making her  
13 submissions.

14 I make no submissions on the matter of  
15 legal counsel. Not having done any specific research  
16 on the matter prior to today, I am not going to venture  
17 into speculation on what I might find if I did that  
18 research. I would simply note for the record that the  
19 Board, this panel, yourself, Madam Chair, this morning  
20 clearly indicated an appropriate sensitivity to this  
21 issue and I think our position is that there has got to  
22 be some room for common sense in this matter.

23 And, finally, the only other point that I  
24 wish to make - and I think I can extend to the panel on  
25 behalf of all counsel whether they are here or not -



1       that we fully recognize the burden that has fallen on  
2       this panel and that within the confines of all of our  
3       obligations to our clients I think this Board can rely  
4       on having the full support of all counsel in completing  
5       this hearing in as expeditious and efficient a manner  
6       as is possible given the nature of the hearing. And,  
7       as I say, both on behalf of myself, Ms. Seaborn, Ms.  
8       Harvie, and all the counsel whether they are here or  
9       not, I am sure that that is a sentiment which is  
10      extended to you by all of us.

11                   And those are all of the matters which I  
12      wish to address.

13                   MADAM CHAIR: Thank you, Mr. Campbell.

14                   Would anyone else like -- Ms. Kleer?

15                   MS. KLEER: All I would say is that NAN  
16      and Windigo also take no issue at all with the Board's  
17      ability to continue hearing this matter.

18                   And, secondly, I appreciated your  
19      comments, Madam Chair, with respect to maintaining an  
20      arm's-length relationship with legal counsel and that  
21      the Board writes the decision and not counsel that  
22      writes the decision and I would simply echo that  
23      position.

24                   MADAM CHAIR: Thank you.

25                   Mr. Freidin?

1                   MR. FREIDIN: Madam Chair, in relation to  
2 reconvening on March the 5th, if one of the issues  
3 which is going to be canvassed is who in fact will  
4 follow the Industry's case perhaps before Forests for  
5 Tomorrow, if the Board has some view as to that it may  
6 be appropriate that the parties who might be asked to  
7 follow the Industry be given notice that that matter  
8 will be raised on March the 5th and they should be here  
9 to in fact make their submissions at that time if they  
10 want to make submissions.

11                   MR. CASSIDY: If I can be of further  
12 assistance in that regard, Madam Chair. I don't even  
13 know if anyone knows who those other parties are. It  
14 may be appropriate, just by way of suggestion, for Ms.  
15 Devaul to contact both full and part-time parties to  
16 write a letter asking them to come out of the woodwork  
17 so to speak and identify themselves and then they may  
18 wish to appear before this Board when we reconvene.

19                   Also, if I could make another request.  
20 The matter of satellite hearings or visits to those  
21 remaining satellite locations, if that could be  
22 canvassed as well among yourselves and if I could  
23 request that the Board give us some direction if you  
24 intend to do that during the course of our evidence or  
25 thereafter. I am unclear as to exactly what your

1 thoughts are on that. That would affect, of course,  
2 the timing of our plans and also obviously Ms.  
3 Swenarchuk's evidence.

4 MADAM CHAIR: We have talked about the  
5 possibility of doing satellite hearings and obviously  
6 there is some logic to doing hearings in northwestern  
7 Ontario, for example, while people still have  
8 facilities in Thunder Bay and before we leave that town  
9 entirely.

10 So it is quite possible we may look at  
11 satellite hearings in either the spring or when we  
12 return from our summer break. Ms. Devaul has been  
13 looking into that and perhaps will have something to  
14 say about it shortly.

15 MR. CASSIDY: Thank you.

16 MADAM CHAIR: Mr. Cassidy, you might  
17 help. Do you know of any members of your association  
18 who would be making presentations separately from the  
19 association?

20 MR. CASSIDY: If I can just have your  
21 indulgence, Madam Chair.

22 MADAM CHAIR: I think Ms. Devaul has a  
23 better idea of the other parties who have contacted the  
24 Board about this.

25 ---Discussion off the record

1                   MR. CASSIDY: Madam Chair, our knowledge  
2                   to date is that none of the members of either  
3                   association at this point intend to make presentations.  
4                   There may be some presentations at satellite hearings  
5                   in the course of those. But, as I understand it, our  
6                   present information is that there is no anticipated  
7                   extra presentations from the companies who are on the  
8                   full-time or part-time parties list at this time.

9                   MADAM CHAIR: All right.

10                  MS. SWENARCHUK: I would just suggest  
11                  that the parties that immediately come to mind, as at  
12                  least possible parties in support of the proponent's  
13                  position, is the Association of Single Industry Towns  
14                  and some of the northern Ontario municipal groups.

15                  MADAM CHAIR: Yes, thank you.

16                  MR. CASSIDY: Another one which I am  
17                  advised may be in that category is the Ontario  
18                  Professional Foresters' Association, Madam Chair.

19                  MADAM CHAIR: Yes. We are going to take  
20                  a short break now. We want to come back and provide  
21                  direction on the points you raised this morning and we  
22                  have some other matters we wish to address as well.

23                  So why don't we take a 20-minute break  
24                  and come back at 11:00, and we will have Ms. Devaul  
25                  look at a list of other parties who might be in support



1 and would logically follow Industry.

2 MR. CASSIDY: Thank you, Madam Chair.

3 MADAM CHAIR: Thank you.

4 ---Recess taken at 10:40 a.m.

5 ---On resuming at 11:05 a.m.

6 MADAM CHAIR: Please sit down, ladies and  
7 gentlemen.

8 Thank you for the Valentines candy. Mr.  
9 Martel said we must have captured your hearts and  
10 that's why we received this.

11 MR. MARTEL: You don't know where I stole  
12 that line from.

13 MADAM CHAIR: On the first matter, we  
14 direct Forests for Tomorrow to make a proposal to the  
15 Board on March 5th concerning the scheduling of its  
16 case.

17 Ms. Devaul is setting out immediately to  
18 assist Forests for Tomorrow and the other parties in  
19 discussing all the factors that go into this decision.  
20 Ms. Devaul will be contacting all the parties that may  
21 be identified at some point as being in support of the  
22 application.

23 A very quick look at our list of parties  
24 suggests such groups as the Red Lake/Ear Falls Joint  
25 Municipal Committee, Northwestern Ontario Associated

1 Chambers of Commerce, the Ontario Professional  
2 Foresters' Association, Venture Tourism Association of  
3 Ontario, Canadian Association of Single Industry Towns,  
4 Ontario Forestry Association, Fort Frances Chamber of  
5 Commerce, Ontario Federation of Labour.

6 The list goes on. Potentially there is a  
7 large number of parties who might be in support of the  
8 application but, as you know, many of these parties are  
9 just not in contact with us on an ongoing basis so we  
10 don't know.

11 Ms. Devaul will do that research and  
12 report back as quickly as she can, initially to Ms.  
13 Swenarchuk, but I expect the other parties to stay in  
14 touch with Ms. Devaul. Once she has some idea of where  
15 we stand on this, she will send out communication to  
16 everybody; she can fax a letter to you.

17 MS. SWENARCHUK: I would just note, Madam  
18 Chair, that my ability to comply with your direction  
19 will depend to some extent on how quickly I receive  
20 that information.

21 MADAM CHAIR: Yes.

22 MS. SWENARCHUK: There is another matter  
23 which I wish to bring to your attention with regard to  
24 March 5th or 6th. I am not exactly sure how to deal  
25 with this.

1                   As other parties in this room will be  
2           aware, the current Minister of Natural Resources is  
3           making a practice of meeting with many of the groups  
4           who are involved in any way with policies having to do  
5           with her department and she has invited the Canadian  
6           Environmental Law Association to meet with her and that  
7           meeting has been postponed a number of times due to her  
8           schedule and her office has been attempting to arrange  
9           a time which would give her more than a short period of  
10          time to consult with us, and my last notice was that  
11          the dates of March 5th or 6th are being considered for  
12          a one-hour meeting some time during those days.

13                   Now, my concern is that presumably the  
14          Industry's Panel No. 2 evidence will commence then and  
15          I will be the first party to cross-examine. I'm  
16          expected to be at the meeting with the Minister, and  
17          subject to the date that's set, I may be requesting the  
18          Board the time to get to the meeting and come back out  
19          of hearing time. I don't want to miss any of the  
20          direct evidence, obviously, since I am the first to  
21          cross.

22                   MADAM CHAIR: Well, we will be sitting in  
23          Toronto.

24                   MS. SWENARCHUK: Yes, but I might have to  
25          leave and come back. And I would request that you not

1 sit in my absence for that period.

2 MADAM CHAIR: Yes, all right.

3 MS. SWENARCHUK: Thank you.

4 MADAM CHAIR: Just a few more quick  
5 matters with respect to the scheduling between the end  
6 of the Industry's case and the commencement of Forests  
7 for Tomorrow's case; and, that is, we are also looking  
8 at -- in addition to the parties in support of the  
9 application, we are looking at the other public  
10 hearings, as we call them satellite hearings.  
11 Sometimes they are not the same thing.

12 For example, Fort Frances to our mind  
13 looks like a likely candidate for a public hearing. As  
14 far as we know there are no parties who intend to lead  
15 evidence in Fort Frances, but the Board has made a  
16 commitment that it will hold a public hearing there.  
17 So you might think in terms of that as being one area  
18 that we might want to visit in the spring at the end of  
19 the Industry's case.

20 On another issue, the scoping session for  
21 Panel 3. Well, we missed last night's scheduled  
22 session. We have four parties who have submitted  
23 statements of issue and I assume there won't be any  
24 others, and we don't have to worry in that case about  
25 the deadline for statements of issue being submitted.



1                   Why don't we set the evening of March the  
2                   6th, which is Tuesday night, as a time to scope Panel  
3                   3.

4                   MR. CASSIDY: Thank you, Madam Chair.

5                   MADAM CHAIR: We thank you very much for  
6                   your comments considering your concerns and your advice  
7                   about the Board retaining legal counsel.

8                   During the the next two-week period when  
9                   the hearing is adjourned we will be interviewing  
10                  candidates to be legal counsel and we will be  
11                  addressing the parties; we will be telling you how we  
12                  intend to proceed with legal counsel when we begin  
13                  again in March.

14                  I mentioned before the break that there  
15                  was another matter that the Board wished to discuss  
16                  today; and, that is, we are prepared to give a ruling  
17                  on the motion made by the Ontario Federation of Anglers  
18                  & Hunters.

19                  The Board has carefully considered the  
20                  submissions made by all of the parties on January 31st,  
21                  1990 on the Notice of Motion filed by the Ontario  
22                  Federation of Anglers & Hunters concerning the Board's  
23                  jurisdiction to review and amend the purpose of the  
24                  undertaking.

25                  It is the Board's decision that the order

1 requested in the Notice of Motion is hereby denied.  
2 Written reasons for our decision to deny this motion  
3 will be provided shortly. We thank all counsel for  
4 their submissions and assistance to the Board.

5 We have taken the step in this instance  
6 of issuing an oral decision in order to remove any  
7 possible obstacles or uncertainties that might be  
8 associated with this motion with respect to the  
9 commencement of the negotiations on draft terms and  
10 conditions which will begin on Monday.

11 The Board places a great deal of  
12 importance on these negotiations. It is our view that  
13 the unexpected and untimely developments concerning the  
14 resignation of Mr. Jeffrey should in no way be  
15 construed as an impediment to productive, intensive  
16 negotiations.

17 We remind you of our ruling of November  
18 8, 1989 that directs parties to examine each of the  
19 specific terms and conditions put forward by each party  
20 and to negotiate in good faith with the express goal of  
21 reaching a commonality of position or agreement on as  
22 many issues as possible while, at the same time,  
23 identifying all outstanding issues in dispute.

24 By April 3rd, 1990 the parties will file  
25 with the Board the results of the negotiating process

1 as set out in our ruling. Again, the timing of Mr.  
2 Jeffrey's resignation is unfortunate, but we are  
3 confident in the ability of the parties to conduct  
4 meaningful negotiations in our collective efforts to  
5 focus the resources of the parties to resolving the  
6 issues in dispute.

7 Yes, Ms. Swenarchuk?

8 MS. SWENARCHUK: Could I just remind you  
9 that the original Board order was somewhat amended in  
10 this room when, after a meeting of counsel, I made a  
11 proposal with regard to the contents of the final  
12 report, if you recall that.

13 MADAM CHAIR: Yes, thank you very much.

14 MR. CASSIDY: Just one point of  
15 clarification, Madam Chair. It is the Board's  
16 intention then not to conduct satellite hearings during  
17 the balance of the Industry case?

18 MADAM CHAIR: During your case?

19 MR. CASSIDY: Yes.

20 MADAM CHAIR: We haven't said we won't do  
21 that, we are looking at it.

22 MR. CASSIDY: That's fine.

23 MADAM CHAIR: I think we would like not  
24 to, unless there is a good place that a week could be  
25 fit in somewhere.

1                   MR. CASSIDY: I can offer our assistance  
2 to Ms. Devaul if you have scheduling questions about  
3 projections, as best they are, as to how we think our  
4 case is going. I remain available to assist Ms. Devaul  
5 if you want to have that information.

6                   MADAM CHAIR: All right. Thank you, Mr.  
7 Cassidy.

8                   Is there any other business today?

9                   (no response)

10                  Well, in that case, thank you very much  
11 and good luck in the next two weeks, and we will see  
12 you back here on March the 5th.

13                  Thank you.

14       ---Whereupon the hearing adjourned at 11:15 a.m., to  
15       be reconvened on Monday, March 5th, 1990 commencing  
16       at 10:00 a.m.

17       [copyright, 1985]

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